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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/903,350	07/11/2001	Eric Lawrence Barsness	ROC920010125US1	9578
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EXAMINER
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VU, NGOC K

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/903,350

Applicant(s)

BARSNESS ET AL.

Examiner

Ngoc K. Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,7-11,24,27,33 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,7-11,24,27,33 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Response to Arguments***

1. Applicant's arguments filed 6/23/2006 have been considered but they are not persuasive.

With respect to claim 3, applicant argues that "an audience size" of the Berezowski system is not the same a growth rate as claimed. This argument is not persuasive. The "audience size" of the Berezowski indicates a number of users watching the particular program. Both "audience size" and "growth rate of viewers" represent a value or a number of viewers. Applicant further points out that "a growth rate is a value indicative of a change in a number of viewers". This feature, however, is not specifically claimed. Moreover, it is noted that "audience size" may be changed from time to time to reflect the actual audience measuring. Accordingly, the term "audience size" equates to the term "growth rate". The arguments with respect to claims 24 and 27 are on the similar basis, accordingly, the similar responses are applied to claims 24 and 27 as discussed regarding claim 3.

With respect to claim 7, applicant states that Berezowski does not teach "a defined group of the end-user receivers". Applicant further asserts that "the viewers in a zip code" of the Berezowski system do not make up a defined group of end-user receivers. Examiner respectfully disagrees.

Claim 7, in part, calls for collecting viewership data from a defined group of the plurality of end-user receivers. In response, the system of Berezowski collects and compiles the audience-related information, e.g., from set-top boxes, local information services, main facilities, etc (see 0105). Berezowski further shows one of the features providing audience information, for example, if the user selects audience information for viewers in the same zip code and selects "Programs by Time", then a graphic 1705 shows that 30 percent of users is the user's zip code watched "I love Lucy" program (see 0089). Accordingly, the percentage of viewers in a

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particular zip code is information identifying a number of viewers watching or recording the "I love Lucy" program. From this view, the viewers in the particular zip code represent a defined group of users or "a defined group of the plurality of end-user receivers".

With respect to claim 33, applicant argues that Berezowski does not teach a processor configured to determine whether a particular program is significant based on at least one of a size and a growth rate of a current viewing audience, and for each significant program, transmit alert information to a plurality of end-user receivers. Examiner respectfully disagrees.

Berezowski's system comprises a processor 170 within distribution facility 180 (see figure 2A) processes the received audience information and then distribute the processed audience information to users (see 0055 and figure 2A). In one embodiment, Berezowski teaches that the system provides a feature "compare to viewers", for example, audience measurements for viewers in the user's zip code and viewers in the nation watching or recording "I Love Lucy" as shown in figure 16. From this view, the processor must compare the audience information between the viewers in the user's zip code and the viewers in the nation. In other words, the processor determines the audience information for "I Love Lucy" program according to the size of the viewers in nation and the viewers in the user's location. Accordingly, "I Love Lucy" program is considerable or significant with respect to the size of viewers.

In response to applicant's argument about displaying audience information in response to user request in the Berezowski's system, it is noted that the context of the claim does not limit the feature "the processor configured to determine whether a particular program is significant based on at least a size and a growth rate of a current viewing audience" not responsive to user request.

With respect to claim 44, applicant argues that Berezowshi does not teach "viewership information comprising group information indicating which specific members of a group are watching a program". (Emphasis added). This argument is not persuasive.

In response, it is noted that the feature upon which applicant relies (i.e., group information indicating which specific members of a group are watching a program) is not recited in the rejected claim. Furthermore, Berezowski shows audience information comprising a number of viewers in a particular location, i.e., user's zip code, watching a program "I Love Lucy" (see figure 16 and 0089). Therefore, "group information indicating which members of a group are watching a program" equates to audience information indicating viewers in a particular location or viewers in user's zip code watching program "I Love Lucy".

Finally, the amendment for claim 44 does not overcome rejection under 35 U.S.C. 101. Therefore, claim 44 is rejected under 35 U.S.C. 101 as addressed below.

Claims 3, 7-11, 24, 27, 33, and 44 are not allowable. Therefore, claims rejections 3, 7-11, 24, 27, 33, and 34 are maintained.

### ***Claim Objections***

2. Claim 3 is objected to because of the following informalities: it appears that a comma is missing between the phrases "the plurality of end-user receivers" and "wherein transmitting the on-screen interface information" in lines 12-13. Please add "," after the word "receivers".  
Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 44 is rejected under 35 U.S.C. 101 because the claimed invention is directed to

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non-statutory subject matter as follows.

I.

Claim 44 drawn to functional descriptive material recorded on a machine readable-medium. Normally, the claim would be statutory. However, the specification, at page 5, second paragraph, defines the claimed computer readable medium as “signal-bearing media”.

A “signal” embodying functional descriptive material is neither a process nor a product (i.e., a tangible “thing”) and therefore does not fall within one of the four statutory classes of § 101. Rather, “signal” is a form of energy, in the absence of any physical structure or tangible material.

Because the full scope of the claim as properly read in light of the disclosure encompasses non-statutory subject matter, the claim as a whole is non-statutory. The examiner suggests amending the claim to include the disclosed tangible computer readable media, while at the same time excluding the intangible media such as signals, carrier waves, etc defined in the specification. Any amendment to the claim should be commensurate with its corresponding disclosure.

II.

Claim 44 defines a computer readable storage device. However, the claim does not define a computer-readable medium or memory encoded with a computer program or computer executable instructions that is executed by a computer to perform certain functions and is thus non-statutory for that reason.

III.

Claim 44 defines a **nonfunctional descriptive material** because “on-screen program guide interface information” and “viewership information” are merely data stored on a disk.

Where certain types of descriptive material, such as music, literature, art, photographs and mere arrangements or compilations of facts or data, are merely stored so as to be read or outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer, then such descriptive material alone does not impart functionality either to the data as so structured, or to the computer. Such "descriptive material" is not a process, machine, manufacture or composition of matter.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 3, 7-11, 24, 27, 33 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Berezowski et al. (US 20020056087 A1).

Regarding claim 3, Berezowski discloses a method for providing viewership information (audience information) to a plurality of television viewers, comprising:

collecting viewership data of a plurality of viewers, wherein the viewership data (audience information) comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (i.e., time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time

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interval (i.e., percentage represents a number of users watched a particular program during a particular time slot – see 0038-0040, 0054 and 0074);

processing the viewership data to provide on-screen interface information (i.e., providing audience information in suitable format for displaying – see 0043, 0040); and

transmitting, to a plurality of end-user receivers, the on-screen interface information and data for an electronic program guide, wherein the on-screen interface information is viewable in one graphical representation (605 – see figure 6) of the plurality of counts displayed along with each respective program entry displayed by the electronic program guide (i.e., “Ch. 2 CBS”, “Mad About You”, “8:00-8:30 pm”, “TV PG”) on displays connected to the plurality of end-user receivers (see 0038-0040; 0074, 0079, 0093 and figures 6-7) wherein transmitting data representing a growth rate (e.g., transmitting audience information representing information such as audience size for a particular program. It is noted that audience size equates to “growth rate” because it represents a number of users or how many users are watching the particular program) of viewers for a particular program (see 0054-0056, 0072, 0073 and figures 5-6).

Regarding claim 7, Berezowski discloses a method for providing viewership information (audience information) to a plurality of television viewers, comprising:

collecting viewership data of a plurality of viewers, wherein the viewership data (audience information) comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (i.e., time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (i.e., percentage represents a number of users watched a particular program during a particular time slot – see 0038-0040, 0054 and 0074);



processing the viewership data to provide on-screen interface information (i.e., providing audience information in suitable format for displaying – see 0043, 0040); and transmitting, to a plurality of end-user receivers, the on-screen interface information and data for an electronic program guide, wherein the on-screen interface information is viewable in one graphical representation (605 – see figure 6) of the plurality of counts displayed along with each respective program entry displayed by the electronic program guide (i.e., “Ch. 2 CBS”, “Mad About You”, “8:00-8:30 pm”, “TV PG”) on displays connected to the plurality of end-user receivers (see 0038-0040; 0074, 0079, 0093 and figures 6-7), wherein transmitting the on-screen interface information comprise transmitting group information identifying group members of the defined group (e.g., number of viewers in a defined zip code watching or recording a program - see figure 16, 0089).

Regarding claim 8, Berezowski discloses providing group information indicating how many members of the defined group are watching a program (i.e., 30% of viewers in the defined zip code watching or recording I love Lucy program - see figure 16).

Regarding claim 9, Berezowski discloses providing group information indicating a group rating for a program (i.e., audience information illustrated in pie chart indicating a group of viewers in a specific area watching I love Lucy program - see figure 16 and 0073).

Regarding claim 10, Berezowski discloses providing group information (identifying information, i.e., user name – see 0089, 0091) indicating which members of the defined group are watching a program.

Regarding claim 11, Berezowski teaches that the members are identified by extracting member identification information from the viewership data; and referencing a database (within 150) containing group information (see 0053, 0089).

Regarding claim 24, Berezowski discloses a signal processing unit (200 – see figure 3) for processing television signals, comprising:

- a first connector (within 260 – figure 3) for receiving a video signal (250) transmitted from a remote provider (distribution facility);

- a second connector (within 260 – see figure 3) for receiving a viewership signal containing viewership data (audience information) collected from a plurality of viewers, wherein the viewership data comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (percentage represents a number of users watched a particular program during a particular time slot – see 0040, 0052, 0054 and 0074);

- a memory (340 – see figure 3) containing an on-screen guide interface formatted with the viewership data (see 0064); and

- a processor (within 260 – see figure 3) configured to format the on-screen guide interface with the viewership data (audience information is processed to be displayed with flip displays, browse displays, program listings or any other suitable display – see 0072), wherein the viewership data is formatted as one graphical (605 – see figure 6) representation of the plurality of counts displayed along with each respective program entry displayed with an electronic program guide (i.e., “Ch. 2 CBS”, “Mad About You”, “8:00-8:30 pm”, “TV PG” - see 0038-0040, 0058, 0074, 0079, 0093 and figures 6-7), wherein the processor is configured to format an on-screen guide interface with viewership indicators (550, 605 – see figures 5-6) using the viewership data, wherein the viewership indicators (550, 605) indicate a viewership growth rate (e.g., audience size) in at least one program being transmitted in the video signal (audience size equates to “growth rate” because it represents a number of users or how many

users are watching the particular program) of viewers for a particular program (see 0054-0056, 0072, 0073 and figures 5-6).

Regarding claim 27, Berezowski discloses an on-screen program guide information provider system, comprising:

a first network (120) connection with a plurality of devices (155) configured to collect viewership data (audience information) of a plurality of television viewers, wherein the viewership data comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (i.e., percentage represents a number of users watched a particular program during a particular time slot – see 0036, 0038-0040, 0054 and 0074) ;

a second network (180) connection with a plurality of end-user receivers (200) (see 0041); and

a processor (170) configured to:

(i) process the viewership data to provide on-screen guide formatting information (i.e., providing audience information in suitable format for displaying – see 0043, 0040);

(ii) transmit, via the second network (180) connection, the on-screen guide formatting information to the plurality of end-user receivers, wherein the onscreen guide formatting information is used by the end-user receivers to output viewership indicators to displays connected to the plurality of end-user receivers, wherein each viewership indicator comprise one graphical representation of the plurality of counts (605 – see figure 6) displayed along with each respect program entry displayed with an electronic program guide (i.e., “Ch. 2 CBS”, “Mad About You”, “8:00-8:30 pm”, “TV PG” - see 0038-0040; 0074, 0079, 0093 and

figures 6-7), wherein the on-screen guide formatting information comprises a growth rate of viewers for a particular program (audience size equates to “growth rate” because it represents a number of users or how many users are watching the particular program) of viewers for a particular program (see 0054-0056, 0072, 0073 and figures 5-6).

Regarding claim 33, Berezowski discloses an on-screen program guide information provider system, comprising:

a first network (120) connection with a plurality of devices (155) configured to collect viewership data (audience information) of a plurality of television viewers, wherein the viewership data comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (i.e., percentage represents a number of users watched a particular program during a particular time slot – see 0036, 0038-0040, 0054 and 0074) ;

a second network (180) connection with a plurality of end-user receivers (200) (see 0041); and

a processor (170) configured to:

(i) process the viewership data to provide on-screen guide formatting information (i.e., providing audience information in suitable format for displaying – see 0043, 0040);

(ii) transmit, via the second network (180) connection, the on-screen guide formatting information to the plurality of end-user receivers, wherein the onscreen guide formatting information is used by the end-user receivers to output viewership indicators to displays connected to the plurality of end-user receivers, wherein each viewership indicator comprise one graphical representation of the plurality of counts (605 – see figure 6) displayed

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along with each respect program entry displayed with an electronic program guide (i.e., "Ch. 2 CBS", "Mad About You", "8:00-8:30 pm", "TV PG" - see 0038-0040; 0074, 0079, 0093 and figures 6-7), and

an external server (150) in communication with the processor (see 0037), wherein the processor is further configured to determined whether a particular program (e.g., "I Love Lucy") is significant (or considerable) based on a size of a current viewing audience (e.g., percentage viewers in the nation is 70 and percentage viewers in user's location is 30), and for teach significant program, provide an alert information (i.e., graphic information 1705 represents audience information as illustrated in figure 16) to the plurality of end-user receivers.

Regarding claim 44, Berezowski discloses a computer data signal embodied in a transmission medium (i.e., 250 – figure 3), comprising on-screen program guide interface information containing viewership information (i.e., audience information) of a plurality of television viewers, wherein the viewership information comprises a plurality of counts (i.e., percentage or numbers of viewers) corresponding to a plurality of time intervals (time slots) for each program, wherein each count represents a number of viewers of a respective program during a respective time interval wherein the on-screen interface information is readable by a plurality of receivers (200) having a network connection (i.e., cable) with a television program provider (180), wherein the viewership information comprises group information indicating which members of a group are watching a program (audience information indicating viewers in a particular location or viewers in user's zip code watching a program "I Love Lucy" – see figure 16, 0089), and wherein viewership information is configured for formatting an onscreen program guide to include one graphical representation (605 – see figure 6) of the plurality of counts displayed along with each respective program entry displayed with the on-screen program guide

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(i.e., "Ch. 2 CBS", "Mad About You", "8:00-8:30 pm", "TV PG" - see 0038-0040, 0058, 0074, 0079, 0093 and figures 6-7).

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoc K. Vu whose telephone number is 571-272-7306. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ngoc K. Vu  
Primary Examiner  
Art Unit 2623

September 13, 2006